



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

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January 15, 2004

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The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVE ORDINANCE AMENDING THE DETERMINATIONS OF
CONTRACTOR NON-RESPONSIBILITY AND CONTRACTOR
DEBARMENT ORDINANCE
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve, introduce, waive reading, and place on your Board's agenda for adoption the attached ordinance amending Title 2, Chapter 2.202 of the Los Angeles County Code, Determinations of Contractor Non-Responsibility and Contractor Debarment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On January 11, 2000, your Board adopted Chapter 2.202 of the County Code, Determinations of Contractor Non-Responsibility and Contractor Debarment ("Non-Responsibility and Debarment Ordinance"). The Non-Responsibility and Debarment Ordinance provides procedures for the County to determine that: 1) a contractor which submitted a bid or proposal on a particular County contract is prohibited from being awarded and/or performing work on that contract, and 2) a contractor is prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the County for a specified period of time.

Since your Board's adoption of the Non-Responsibility and Debarment Ordinance in January, 2000, we discovered that it would be appropriate to make some minor revisions to it. These revisions will provide clarity and consistency within the

Non-Responsibility and Debarment Ordinance, and the purpose of this recommendation is to implement these revisions.

Implementation of Strategic Plan Goals

The recommended action is consistent with the principles of the Countywide Strategic Plan Goals of Organizational Effectiveness and Fiscal Responsibility by promoting integrity in the County's contracting processes and protecting the public interest.

FISCAL IMPACT/FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In January, 2000, your Board adopted the Non-Responsibility and Debarment Ordinance to promote integrity in the County's contracting processes and to protect the public interest. This Ordinance sets forth the requirements and process for finding a contractor non-responsible or debarring a contractor.

The recommended action will provide clarity and consistency within the Non-Responsibility and Debarment Ordinance, and include the following revisions: 1) making consistent the specified factors to find a contractor non-responsible with the factors to debar a contractor, 2) including a definition of "non-responsibility" in the definition section of the Non-Responsibility and Debarment Ordinance, 3) clarifying that the ordinance also applies to entities contracting with or seeking to contract with non profit corporations created by the County, 4) clarifying that the County may debar a contractor who has had a contract with the County in a preceding three year period, and 5) minor stylistic language changes.

The accompanying ordinance was drafted by County Counsel.

CONTRACTING PROCESS

The Non-Responsibility and Debarment Ordinance will continue to be applicable in the County's contracting processes. This recommended action does not involve a specific contract.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

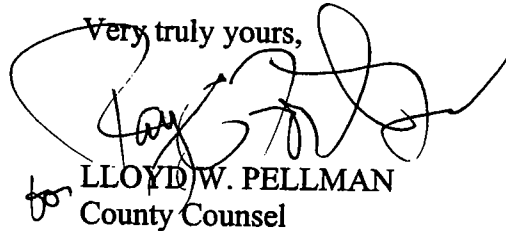
Not applicable.

NEGATIVE DECLARATION/ENVIRONMENTAL IMPACT REPORTS

Not applicable.

CONCLUSION

Please return one adopted copy of this letter to the Offices of the County Counsel and the Auditor-Controller and the Chief Administrative Office.

Very truly yours,

LLOYD W. PELLMAN
County Counsel

LWP:LS
Attachment

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive-Officer
Board of Supervisors


J. Tyler McCauley
Auditor-Controller

ANALYSIS

This ordinance amends Title 2 – Administration of the Los Angeles Code, by making minor changes to provide clarity and consistency to Chapter 2.202 regarding Determinations of Contractor Non-Responsibility and Contractor Debarment.

LLOYD W. PELLMAN
County Counsel

By



LILLIAN D. SALINGER
Senior Deputy County Counsel
Public Works Division

LDS:jn

12/11/03 (requested)

12/17/03 (revised)

ORDINANCE NO. _____

An ordinance amending Title 2 - Administration of the Los Angeles County Code, by making minor changes to provide clarity and consistency to Chapter 2.202 regarding Determinations of Contractor Non-Responsibility and Contractor Debarment.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.202.020 is hereby amended to read as follows:

2.202.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Contractor" means a person, partnership, corporation or other entity who has contracted with, or is seeking to contract with, the county or a nonprofit corporation created by the county to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county. A contractor includes a contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor or vendor.

B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county.

C. "Debarment" means an action taken by the county which results in a contractor being prohibited from bidding ~~upon~~ or proposing on, being awarded, and/or performing work on a contract with the county for a period of up to three years. A contractor who has been determined by the county to be subject to such a prohibition is "debarred."

D. "Department head" means either the head of a department responsible for administering a particular contract for the county or the designee of same.

E. "County" means the county of Los Angeles, any public entities for which the board of supervisors is the governing body, ~~nonprofit corporations created by the county~~ and any joint powers authorities that have adopted county contracting procedures.

F. "Contractor hearing board" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the board of supervisors.

G. Determination of "non-responsibility" means an action taken by the county which results in a contractor who submitted a bid or proposal on a particular contract being prohibited from being awarded and/or performing work on that contract. A contractor who has been determined by the county to be subject to such a prohibition is "non-responsible" for purposes of that particular contract.

SECTION 2. Section 2.202.030 is hereby amended to read as follows:

2.202.030 Determination of contractor non-responsibility.

A. Prior to a contract being awarded by the county, the county may determine that a ~~party~~contractor submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the county determines that a ~~bidder/proposer~~contractor is non-responsible for a particular contract, said

bidder/proposer/contractor shall be ineligible for the award of prohibited from being awarded and/or performing work on that contract.

B. The county may declare a contractor to be non-responsible for purposes of a particular contract if the county, in its discretion, finds that the contractor has done any of the following: (1) violated a term of a contract with the county or a nonprofit corporation created by the county;~~(1)~~(2) committed anyan act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the county-or, any other public entity, or a nonprofit corporation created by the county, or engaged in a pattern or practice which negatively reflects on same; ~~(2)~~(3) committed an act or omission which indicates a lack of business integrity or business honesty; or ~~(3)~~(4) made or submitted a false claim against the county or any other public entity.

C. Before making a determination of non-responsibility pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed non-responsibility determination, and shall advise the contractor that a non-responsibility hearing will be scheduled on a date certain. Thereafter, the department head shall conduct a hearing where evidence on the proposed non-responsibility determination is presented. The contractor and/or attorney or other authorized representative of the contractor shall be afforded an opportunity to appear at the non-responsibility hearing and to submit documentary evidence, present witnesses and offer rebuttal evidence. After such hearing, the department head shall prepare a

proposed decision, which shall contain a recommendation regarding whether the contractor should be found non-responsible with respect to the contract(s) at issue. A record of the hearing, the proposed decision and any recommendation shall be presented to the board of supervisors. The board of supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the department head. A non-responsibility finding shall become final upon approval by the board of supervisors.

D. The decision by the county to find a contractor non-responsible for a particular contract is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the county in determining whether a contractor should be deemed non-responsible.

SECTION 3. Section 2.202.040 is hereby amended to read as follows:

2.202.040 Debarment of Contractors.

A. The county may debar a contractor who has ~~an existing contract~~ had a contract with the county in the preceding three years and/or a contractor who has submitted a bid or proposal for a new contract with the county.

B. The county may debar a contractor if the county finds, in its discretion, that the contractor has done any of the following: (1) violated any term of a contract with the county or a nonprofit corporation created by the county; (2) committed any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the county ~~or~~, any other public entity, or a nonprofit corporation created by the county, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or ~~offense~~omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the county or any other public entity.

C. Before making a debarment determination pursuant to this chapter, the department head shall give written notice to the contractor of the basis for the proposed debarment, and shall advise the contractor that a debarment hearing will be scheduled on a date certain. The contractor hearing board shall conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or attorney or other authorized representative must be given an opportunity to appear at the debarment hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at that hearing. After such hearing, the contractor hearing board shall prepare a proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred and, if so, the appropriate length of time for the debarment. A record of the hearing, the proposed decision and any recommendation shall be presented to the board of supervisors. The board of

supervisors may, in its discretion, limit any further hearing to the presentation of evidence not previously presented. The board of supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the contractor hearing board. A debarment finding shall become final upon the approval of the board of supervisors.

D. The decision by the county to debar a contractor is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns or practices as well as any relevant mitigating factors may be considered by the county in making any debarment decision. ~~Upon a debarment finding by the board of supervisors, t~~The county shall have the right, in its discretion, to determine the lengthperiod of time that the contractor may be ~~prohibited from bidding upon and being awarded a new contract with the county~~debarred, which period may not exceed three years. In addition, upon a debarment finding by the board of supervisors, the county may, in its discretion, terminate any or all existing contracts the contractor may have with the county. In the event that any existing contract is terminated by the county, the county shall maintain the right to pursue all other rights and remedies provided by the contract and/or applicable law.

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